

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

**INTERIM STANDING ORDER
RE: SOCIAL SECURITY PROCEDURES
PENDING ADOPTION OF LOCAL RULES:**

ENTERED

SEP 20 2005

**TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia**

Scope and Assignment (proposed new LR Civ P 9.1): This Standing Order applies to actions in which individuals seek district court review of a final decision of the Commissioner of Social Security (Commissioner), pursuant to 42 U.S.C. § 405(g). This Standing Order will apply until such time as the Local Rules addressing each issue detailed herein are officially adopted by this Court.

Appeals of Social Security claims. When an appeal of a Social Security claim is filed, it will be referred to the magistrate judge designated for the division in which the claimant resides. The clerk will provide each party and/or attorney with a "Consent to Proceed Before U.S. Magistrate Judge" form¹, with a notice to return the completed consent form within 20 days. If the United States Attorney offers to consent in all Social Security appeals by providing the clerk with a letter to that effect, it will not be necessary for the Commissioner to complete the consent form. A copy of the letter will be placed in the file when the plaintiff's consent is filed. When the parties in a Social Security appeal consent to proceed before a magistrate judge, it is not necessary for a district judge to sign an order of reference. Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a District Judge. A record of all assignments made shall be kept by the clerk.

¹Attachment 1 - Consent to Proceed Before U.S. Magistrate Judge form.

Initiation of Action (proposed new LR Civ P 9.2).

(a) *Complaint.* A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) by:

(1) completing and filing the form Complaint for Review of the Decision of the Commissioner² attached to this Standing Order, or

(2) filing a complaint that contains the following information:

(A) the city, county, and state of the plaintiff's residence;

(B) the date of the decision of the Appeals Council;

(C) an allegation that the decision of the Commissioner is not supported by substantial evidence and/or a description of other error alleged by the plaintiff;

(D) a demand for the specific relief claimed; and

(E) the address, telephone, facsimile number, and email address of plaintiff's attorney, but does not contain the following personal data identification information:

(i) Social Security number(s);

(ii) date(s) of birth;

(iii) names of minor children (with cases involving children under age eighteen, both the parent or guardian and the child claimant identified on the complaint only by initials); and

(iv) street address of the plaintiff.

²Attachment 2- Complaint for Review of the Decision of the Commissioner of Social Security form.

(b) *Personal Data Identification Form*. A personal data identification form³ shall be filed with the complaint. The plaintiff may complete and file the Personal Data Identification Form appended to this Standing Order or may file a form that contains the personal data set forth in proposed new Local Rule of Civil Procedure 9.2(a)(2)(E)(i)-(iv). If the plaintiff is not represented by an attorney, the plaintiff shall also provide the plaintiff's telephone number and facsimile number and email address, if any. The completed personal data identification form will not be available through the court's web page or electronic filing system, except to the court, the parties, and their counsel. The plaintiff shall serve a copy of the personal data identification form with a copy of the summons and complaint.

Commissioner's Response (proposed new LR Civ P 9.3).

(a) *Filing and service*. No later than sixty (60) days after the plaintiff serves the summons, complaint, and personal data identification form, the Commissioner shall file and serve on the plaintiff either:

- (1) a motion and memorandum in support as described in proposed new Local Rule 9.5(a)(1); or
- (2) an answer alleging generally that the Commissioner's decision is supported by substantial evidence and a certified copy of the administrative transcript.

The motion or answer shall include the name, telephone number, facsimile number, and email address of the Assistant United States Attorney who is responsible for the case.

³Attachment 3: Personal Data Identification Form for Social Security Appeals.

(b) *Privacy*. Social Security cases will be available only to the court, the parties, and their counsel through the court's electronic filing system via the Internet. Social Security files are still available at the courthouse in their entirety to the general public.

(c) *Form*. The certified copy of the administrative transcript is exempt from the court's civil case redaction requirements.

(d) *Discovery*. Discovery is not permitted in these cases.

(e) *Material defect in administrative transcript*. If a party discovers an omission from, improper submission with, or other similar defect in the administrative transcript, the party may notify the court and opposing party by filing a motion to correct the transcript. Upon a finding that a defect in the transcript is material, the court may enter an order requiring the defendant to file a supplemental certified administrative transcript. Deadlines for filing briefs will run from the date of filing of the certified administrative transcript or the supplemental certified administrative transcript, whichever occurs last.

Briefs (proposed new LR Civ P 9.4).

(a) *Time for filing and service*. The plaintiff shall file and serve a brief in support of the complaint no later than thirty (30) days after the date of service of the certified (or supplemental) administrative transcript. The Commissioner shall file and serve a brief in support of the defendant's decision no later than thirty (30) days after the date of service of the plaintiff's brief. The plaintiff may file and serve a reply brief no later than ten (10) business days after the date of service of the Commissioner's brief.

(b) *Form of briefs.* The plaintiff's brief shall contain a statement of issues, a statement of the facts, and an argument on each issue asserted. The statement of facts shall cite by transcript page number to the evidence on which the plaintiff relies. The argument on each issue shall identify the findings which are alleged not to be supported by substantial evidence, and other errors which are alleged to have been made, with citations to the pertinent transcript pages and to relevant regulations, rulings, and cases. The Commissioner's brief shall contain a statement of facts and an argument in response to each issue raised by the plaintiff. Opening and responding briefs shall not exceed twenty (20) double-spaced pages and the reply brief shall not exceed ten (10) double-spaced pages, except with leave of court. Neither a table of contents nor a table of authorities is required.

Motions to Dismiss or Remand (proposed new LR Civ P 9.5).

(a) *Time for filing by Commissioner.* No later than sixty (60) days after the plaintiff serves the summons, complaint, and personal data identification form, the Commissioner may file and serve either:

- (1) a motion to dismiss pursuant to Rule 12, Fed. R. Civ. P., and memorandum in support or
- (2) a motion to remand to the Commissioner for further action pursuant to either sentence four or sentence six of 42 U.S.C. § 405(g).

(b) *Time for filing by plaintiff.* After the Commissioner has filed and served an answer and certified administrative transcript, the plaintiff may file and serve a motion to remand under sentence six of 42 U.S.C. § 405(g) and a memorandum in support of such motion, based on presentation of new and material evidence.

(c) *Briefs*. The time periods for filing and serving responses and replies to motions to dismiss or to remand are the same as for briefs.

Petition or Motion for Attorney's Fees (proposed new LR Civ P 9.6). The time limits set forth in FR Civ P 54(d) do not apply to petitions or motions for attorney's fees in Social Security cases. If the plaintiff seeks attorney's fees pursuant to the Equal Access to Justice Act, a motion for such fees shall be filed within ninety (90) days of the entry of final judgment, pursuant to 28 U.S.C. § 2412(d), and served on the United States Attorney. If the plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 406(b), such motion for fees shall be filed promptly after the plaintiff receives notice of the amount of past-due benefits, shall be itemized, shall be limited to the time expended in the representation of the plaintiff in federal court, and shall be served on the United States Attorney.

Electronic Filing (proposed new LR Civ P 9.7).

(a) *Preference for electronic filing*. Electronic filing of documents is preferred. A paper copy of the certified (and supplemental, if any) administrative transcript, however, shall be provided by the Commission to the chambers of the magistrate judge assigned to the action when the answer is filed.


(b) *Personal data information*. The completed Personal Data Identification Form and the certified (and supplemental, if any) administrative transcript will not be available through the court's web page or electronic filing system, except to the court, the parties, and their counsel. No other document in the court file shall contain the personal data identification information.

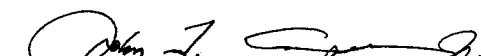
Oral Argument (proposed new LR Civ P 9.8). The court will generally decide Social Security appeals on the pleadings and briefs, without oral argument. A judicial officer may hear oral argument, either *sua sponte* or at the request of either party.

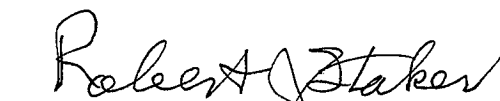
Other Local Rules in Conflict (proposed new LR Civ P 9.9). This Standing Order governing Social Security appeals takes precedence over other Local Rules in conflict with this Standing Order.

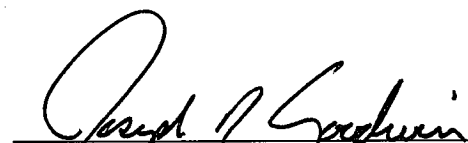
This Standing Order SUPERSEDES all previous Standing Orders issued by this Court to the extent that they relate to Social Security cases. The Clerk is directed to enter this Order in each civil action affected by this order filed on or after Sept. 20, 2005 and to transmit copies to counsel of record and to any unrepresented parties.


Enter: This 20th day of September, 2005


David A. Faber, Chief Judge


John T. Copenhaver, Jr., Judge


Robert J. Staker, Senior Judge


Joseph R. Goodwin, Judge


Robert C. Chambers, Judge

USDC/CV-001
(04/05)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT SELECT ONE:

[REDACTED]

v.

CIVIL ACTION [REDACTED]

[REDACTED]

CONSENT TO JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, United States Code, Section 636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

Date

Signature

Note: Return this form to the Clerk of the Court if you consent to jurisdiction by a United States magistrate judge. Do not send a copy of this form to any district judge or magistrate judge.

USDC/CIV-013 Complaint for Review of the Decision of the Commissioner of Social Security (Rev. 8/05)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT SELECT ONE:

Plaintiff,

COMPLAINT FOR REVIEW OF THE DECISION
OF THE
COMMISSIONER OF SOCIAL SECURITY

V.

JoAnne B. Barnhart, Commissioner
of Social Security,

CIVIL ACTION

Defendant.

Plaintiff's current residence:

(city, county, state and ZIP code)

Jurisdiction and venue is based on 42 U.S.C. § 405(g).

Date of Appeals Council's decision:

The decision of the Commissioner should be (mark those which apply):

☐

Reversed

☐

Modified

☐

Remanded

because it is not supported by substantial evidence, and/or because the Commissioner committed
other error which is

Name of attorney, if any:

Attorney's street address:

Attorney's telephone number:



Attorney's fax number:

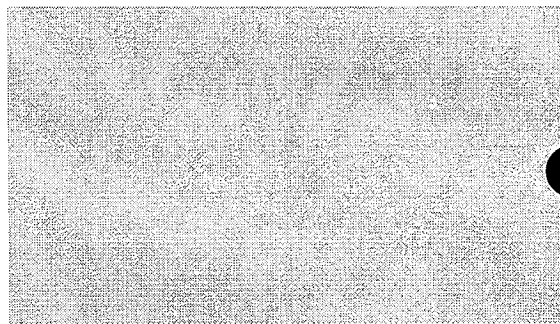


Attorney's email address:



SIGN HERE

Signature of attorney



?

Signature of plaintiff, if no attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT SELECT ONE:

,

(Note: Use initials if a child is claiming benefits)

Plaintiff,

**PERSONAL DATA IDENTIFICATION FORM
FOR
SOCIAL SECURITY APPEALS**

V.

**JoAnne B. Barnhart, Commissioner
of Social Security,
Defendant.**

CIVIL ACTION

Plaintiff's name or initials:

(first, middle, last and other names used, if any)

Plaintiff's mailing address:

(street)

(city, state and ZIP code)

Child's full name (if Social Security claim is for a child):

(first, middle, last and other names used, if any)

Social Security Number of Person claiming benefits:

Social Security Number of parent or other relevant wage earner:

Date of birth of person claiming benefits:

Date of death of wage earner (if a survivor's claim):

If the plaintiff is not represented by an attorney, complete the following:

Plaintiff's telephone Number *(if any)*: _____

Plaintiff's fax number *(if any)*: _____

Plaintiff's email address *(if any)*: _____

Signature of attorney

SIGN HERE

Signature of plaintiff, if no attorney

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